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10 Attorneys for Plaintiff,  
TONY HONG

11  
12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**  
14 **WESTERN DIVISION**  
15

16 TONY HONG, an individual

17 Plaintiff,

18 v.

19  
20 NIDECKER US INC, a Washington  
corporation, JONES SNOWBOARDS LLC,  
21 a California limited liability company,  
MYSTERY MADE, LLC, a Washington  
22 limited liability company, and DOES 1-10,  
inclusive

23  
24 Defendant

Case No.

- 1) **COMPLAINT FOR COPYRIGHT  
INFRINGEMENT (17 U.S.C. § 501)**  
2) **FALSIFICATION OF  
COPYRIGHT MANAGEMENT  
INFORMATION (17 U.S.C. §  
1202(a))**  
3) **REMOVAL OF COPYRIGHT  
MANAGEMENT INFORMATION  
(17 U.S.C. § 1202(b))**

**DEMAND FOR JURY TRIAL**

1 Tony Hong (“Plaintiff” or “Hong”), by and through his attorneys of record,  
2 complains against Nidecker USA Inc. (“Nidecker”), Jones Snowboards LLC (“Jones”), and  
3 Mystery Made LLC (“Mystery Made”) (collectively “Defendants”) as follows:

4 **JURISDICTION AND VENUE**

5 1. This is a civil action against Defendants for their acts of copyright  
6 infringement in violation of the United States Copyright Act, 17 U.S.C. §§ 101 *et seq.* and  
7 acts of falsification and removal of copyright management information in violation of 17  
8 U.S.C. §1202. This Court has subject matter jurisdiction over the copyright infringement  
9 under 28 U.S.C. § 1331, 17 U.S.C. § 501(a), and 28 U.S.C. § 1338(a).

10 2. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 28  
11 U.S.C. § 1400(a) in that the claim arises in this Judicial District, the Defendants may be  
12 found and transact business in this Judicial District, and the injury suffered by Plaintiff  
13 took place in this Judicial District. Defendants are subject to the general and specific  
14 personal jurisdiction of this Court because of their contacts with the State of California.

15 **PARTIES**

16 3. Tony Hong is a resident of Los Angeles, California.

17 4. Plaintiff is informed and believes and, upon such, alleges that Nidecker is a  
18 Washington corporation with a principal place of business in Bellingham, Washington.

19 5. Plaintiff is informed and believes and, upon such, alleges that Jones is a  
20 California limited liability company with a principal place of business in Truckee,  
21 California.

22 6. Plaintiff is informed and believes and, upon such, alleges that Mystery Made  
23 is a Washington limited liability company with a principal place of business in Seattle,  
24 Washington.

25 7. DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues  
26 said Defendants by such fictitious names. Plaintiff will ask leave of Court to amend this  
27 Complaint and insert the true names and capacities of said Defendants when the same have  
28 been ascertained. Plaintiff is informed and believes and, upon such, alleges that each of the

1 Defendants designated herein as a “DOE” is legally responsible in some manner for the  
2 events and happenings herein alleged, and that Plaintiff’s damages as alleged herein were  
3 proximately caused by such Defendants.

4  
5 **STATEMENT OF FACTS**

6 *Plaintiff and the Work Forming the Subject Matter of This Dispute*

7 8. Tony Hong is a prominent artist, whose work has featured in permanent public  
8 installations, commercial projects, and solo showings. His work has been published in the  
9 Huffington Post, Professional Artist Magazine, and the Art of Elysium Christie’s Auction  
10 Catalog, among many others, and his commercial clients include Apple, AT&T, Target,  
11 and Verizon.

12 9. Hong created “Tree Rings,” an illustration depicting fanciful inner-tree rings  
13 of a tree trunk. Tree Rings has been licensed by restaurants and displayed on public  
14 billboards and murals. The work has been timely registered with the United States  
15 Copyright Office. A copy of the work is attached as Exhibit A.

16 *Defendants and their Unlawful Activities*

17 10. On information and belief, Defendant Nidecker is a subsidiary of Nidecker  
18 S.A., a Swiss company that was founded in 1887. Nidecker and Nidecker S.A. primarily  
19 focus on producing snowboards for leading snowboard brands, including Nidecker, Jones,  
20 YES, Slash, and NOW bindings. According to its website, Nidecker’s products are  
21 currently distributed in 32 countries and have won multiple awards for innovative designs  
22 and materials. On information and belief, Nidecker sells its products to Southern California  
23 residents, as it has at least one authorized retailer in Torrance, California.

24 11. On information and belief, Defendant Jones was founded in 2009. Jones  
25 develops and sells snowboards and related gear. It claims Jones was founded to innovate  
26 backcountry snowboarding. On information and belief, Jones sells its products to Southern  
27 California residents, including through numerous retailers located in Southern California,  
28

1 including in Torrance, Long Beach, and Arcadia among others. On information and belief,  
2 Defendant Jones owns, operates and/or controls the website jonessnowboards.com.

3 12. On information and belief, Nidecker controls and/or owns Jones. The terms  
4 and conditions for the Jones Snowboards website states that Nidecker SA and Nidecker US  
5 Inc. operates the website “pursuant to agreements” with Jones Snowboards LLC. On  
6 information and belief, Nidecker materially contributed to the infringement as described  
7 herein with knowledge thereof, and/or had the right and ability to control Jones and  
8 financially benefited from the infringement.

9 13. On information and belief, Defendant Nidecker and Jones retained Mystery  
10 Made to reproduce, distribute, and create an unauthorized derivative version of Tree Rings  
11 without permission or license by imposing Tree Rings on a t-shirt (“Infringing T-shirt”). A  
12 copy of the infringement is attached as Exhibit B.

13 14. Subsequently, Nidecker, by and through Jones, reproduced, distributed, and  
14 publicly displayed Tree Rings by selling the Infringing T-shirt on its website. *See* Exhibit  
15 B. Moreover, Jones further infringed Tree Rings by posting a derivative version of “Tree  
16 Rings” as a background to JonesSnowboards.com, without consent or license.

17 15. Defendants used Hong’s Tree Rings to drive interest to their products,  
18 including the Infringing T-shirt, and traffic to the Jones Snowboards Website. Thus,  
19 Defendants acted with the purpose and goal of financial gain, despite being sophisticated  
20 designers and innovators, with full knowledge of the strictures of federal copyright law and  
21 the basic requirements for licensing the use of copyrighted content for commercial  
22 exploitation.

23 16. Plaintiff has attempted to resolve this case short of litigation. Plaintiff  
24 approached Defendants to request that they cease and desist unlawful use of his  
25 copyrighted works and take appropriate steps to resolve this matter amicably. Defendant  
26 Nidecker responded by admitting to the infringement and falsification and removal of  
27 copyright management information. Plaintiff has attempted to follow-up with counsel for  
28 Nidecker on several occasions, but the follow-up requests have been ignored. Defendants

1 have given Plaintiff no alternative but to file suit to protect his basic intellectual property  
2 rights from willful infringement.

3  
4 **FIRST CLAIM FOR RELIEF**

5 **(Copyright Infringement, 17 U.S.C. § 501)**

6 17. Plaintiff incorporates here by reference the allegations in paragraphs 1 through  
7 16 above.

8 18. Plaintiff is the rightsholder to the copyrights to Tree Rings, which consists of  
9 wholly original material that constitutes copyrightable subject matter under the laws of the  
10 United States. Plaintiff has complied in all respects with the Copyright Act and all of the  
11 laws of the United States governing copyrights, including timely registering Hong's Tree  
12 Ring's with the United States Copyright Office, Registration Number VA 2-022-677.

13 19. Defendants have directly, vicariously and/or contributorily infringed, and  
14 unless enjoined, will continue to infringe Hong's copyrights, by reproducing, displaying,  
15 distributing and utilizing the Copyrighted Works for purposes of trade in violation of 17  
16 U.S.C. § 501 *et seq.*

17 20. Defendants have willfully infringed Tree Rings by knowingly reproducing,  
18 displaying, distributing and utilizing it for purposes of trade, as shown in Exhibit B.

19 21. Defendants' acts of infringement are willful because, inter alia, Defendants are  
20 sophisticated designers and distributors of snowboards with full knowledge of the strictures  
21 of federal copyright law and the basic requirements for licensing the use of copyrighted  
22 content for commercial exploitation.

23 22. On information and belief, Defendants, despite such knowledge, willfully  
24 reproduced, publicly distributed and displayed Tree Rings. Defendants have received  
25 substantial benefits in connection with the unauthorized reproduction, display, distribution  
26 and utilization of Tree Rings for purposes of trade, including by increased t-shirt sales  
27 without incurring design costs, and increasing the traffic to Defendants' website and, thus,  
28 increasing the sales realized.

23. As a result of the acts of Defendants alleged herein, Hong has suffered substantial damage to his business in the form of injury to goodwill and reputation, and the dilution of the value of his rights, all of which are not yet fully ascertainable. Accordingly, Hong seeks a declaration that Defendants have infringed Hong's copyrights and an order under 17 U.S.C. § 502 enjoining Defendants from any further infringement of Hong's copyrights.

## **SECOND CLAIM FOR RELIEF**

### **(Falsification of Copyright Management Information,**

### **17 U.S.C. § 1202(a) et seq., against Defendants)**

24. Plaintiff incorporates here by reference the allegations in paragraphs 1 through 23 above.

25. The name of, and other identifying information about, the author of a work and the copyright owner of the work constitutes "copyright management information" as defined under 17 U.S.C. § 1202(c)(2) & (3).

26. Hong's Tree Rings is published with the name of the work, as well as Hong's authorship and ownership credit, as shown in Exhibit B. In conjunction with Defendants' creation of an unauthorized derivative version of "Tree Rings", its distribution and public display, Defendants falsified CMI, including the title, the authorship information and the ownership information, and have admitted that they knowingly did so, by making it appear as though Defendants were the true author and owner of "Tree Rings."

27. As such, Hong is informed and believes and on that basis alleges that Defendants, without the knowledge or authority of Hong or the law, and with the intent to induce, enable, facilitate and/or conceal infringement of Hong's copyright or, having reasonable grounds to know that it would induce, enable, facilitate and/or conceal infringement of Hong's copyright, intentionally falsified and/or caused or induced others to falsify copyright management information from Hong's Tree Rings, and/or distributed or imported Hong's Tree Rings and/or caused or induced others to distribute or import Hong's

1 Tree Rings with knowledge of the falsification of Hong's copyright management  
2 information, and/or distributed or imported for distribution Tree Rings with knowledge of  
3 the falsification of copyright management information in violation of 17 U.S.C. §  
4 1202(a)(1)-(3).

5 28. Defendants' falsification of copyright management information for Tree Rings  
6 and subsequent distribution and public display of Tree Rings was willful and intentional,  
7 and was and is executed with full knowledge of Hong's rights under copyright law, and in  
8 disregard of Hong's rights.

9 29. Hong is entitled to recover his actual damages suffered as a result of the  
10 violation and any profits of Defendants attributable to the violation and not taken into  
11 account in computing actual damages, or, at Hong's election, statutory damages, pursuant  
12 to 17 U.S.C. § 1203(c), of up to \$25,000 per act of falsification.

13 30. Hong is entitled to recover costs and attorneys' fees from Defendants pursuant  
14 to 17 U.S.C. § 1203(b)(4) and (5).

15 31. Defendants' violation of 17 U.S.C. § 1202(b) has caused, and, unless  
16 restrained by this Court, will continue to cause, irreparable injury to Hong not fully  
17 compensable in monetary damages. Pursuant to 17 U.S.C. § 1203(b), Hong is entitled to a  
18 preliminary and permanent injunction enjoining Defendants from further such violations.

19 **THIRD CLAIM FOR RELIEF**

20 **(Removal of Copyright Management Information,**

21 **17 U.S.C. § 1202(b) et seq., against Defendants)**

22 32. Plaintiff incorporates here by reference the allegations in paragraphs 1 through  
23 31 above.

24 33. The name of, and other identifying information about, the author of a work  
25 and the copyright owner of the work constitutes "copyright management information" as  
26 defined under 17 U.S.C. § 1202(c)(2) & (3).

27 34. In conjunction with their distribution and public display, Defendants have  
28 admitted that they knowingly removed CMI, including the title, the authorship and



1 ownership information, claiming that the removal was made for aesthetic purposes. By  
2 taking off CMI, Defendants knowingly mislead people as to the author and owner of “Tree  
3 Rings,” and attempt to cover up their own infringement, as shown in Exhibit B.

4 35. As such, Hong is informed and believes and on that basis alleges that  
5 Defendants, without the knowledge or authority of Hong or the law, and with the intent to  
6 induce, enable, facilitate and/or conceal infringement of Hong’s copyright or, having  
7 reasonable grounds to know that it would induce, enable, facilitate and/or conceal  
8 infringement of Hong’s copyright, intentionally removed and/or caused or induced others  
9 to remove copyright management information from Hong’s Tree Rings, and/or distributed  
10 or imported Hong’s Tree Rings and/or caused or induced others to distribute or import  
11 Hong’s Tree Rings with knowledge of the removal of Hong’s copyright management  
12 information, and/or distributed or imported for distribution Tree Rings with knowledge of  
13 the removal of copyright management information in violation of 17 U.S.C. § 1202(b)(1)-  
14 (3).

15 36. Defendants’ removal and/or alteration of copyright management information  
16 for Tree Rings and subsequent distribution and public display of Tree Rings was willful  
17 and intentional, and was and is executed with full knowledge of Hong’s rights under  
18 copyright law, and in disregard of Hong’s rights.

19 37. Hong is entitled to recover its actual damages suffered as a result of the  
20 violation and any profits of Defendants attributable to the violation and not taken into  
21 account in computing actual damages, or, at Hong’s election, statutory damages, pursuant  
22 to 17 U.S.C. § 1203(c), of up to \$25,000 per act of removal.

23 38. Hong’s is entitled to recover costs and attorneys’ fees from Defendants  
24 pursuant to 17 U.S.C. § 1203(b)(4) and (5).

25 39. Defendants’ violation of 17 U.S.C. § 1202(b) has caused, and, unless  
26 restrained by this Court, will continue to cause, irreparable injury to Hong not fully  
27 compensable in monetary damages. Pursuant to 17 U.S.C. § 1203(b), Hong is entitled to a  
28 preliminary and permanent injunction enjoining Defendants from further such violations.



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendants as follows:

1. That the Defendants, their officers, agents, servants, employees, representatives, and attorneys, and all persons in active concert or participation with them, be permanently enjoined from designing, copying, reproducing, displaying, promoting, advertising, distributing, or selling, or any other form of dealing or transaction in, any and all advertising and promotional materials, print media, signs, Internet websites, or any other media, either now known or hereafter devised, bearing any image or design which infringe, contributorily infringe, or vicariously infringe upon Hong's Tree Rings;

2. For the entry of a seizure order directing the U.S. Marshall to seize and impound all items possessed, owned or under the control of Defendants, their officers, agents, servants, employees, representatives and attorneys, and all persons in active concert or participation with them, which infringe upon Hong's Tree Rings copyrights, including but not limited to any and all broadcasting materials, advertising materials, print media, signs, Internet web sites, domain names, computer hard drives, servers or any other media, either now known or hereafter devised, bearing any materials which infringe, contributorily infringe, or vicariously infringe upon Hong's Tree Rings as well as all business records related thereto, including, but not limited to, lists of advertisers, clients, customers, viewers, distributors, invoices, catalogs, and the like.

3. For actual damages and disgorgement of all profits derived by Defendants from their acts of copyright infringement and to reimburse Hong for all damages suffered by Plaintiffs by reasons of Defendants' acts, pursuant to 17 U.S.C. §§ 504 (a)(1) & (b), 1203(c)(1)(A) & (c)(2).

4. For an accounting of all profits, income, receipts or other benefit derived by Defendants from the reproduction, copying, display, promotion, distribution or sale of products and services, or other media, either now known or hereafter devised, that

1 improperly or unlawfully infringe upon Plaintiff's copyrights pursuant to 17 U.S.C. §§ 504  
2 (a)(1) & (b), 1203(c)(1)(A) & (c)(2).

3 5. For statutory damages for copyright infringement, including willful  
4 infringement, in accordance with 17 U.S.C. §§ 504(a)(2) & (c), 1203(c)(1)(B) & (c)(3)(B).

5 6. For costs and interest pursuant to 17 U.S.C. §§ 504 (a)(1) & (b), 505,  
6 1203(b)(4).

7 7. For reasonable attorneys' fees incurred herein pursuant to 17 U.S.C. §§ 505,  
8 1203(b)(5).

9 8. For any such other and further relief as the Court may deem just and  
10 appropriate.

11  
12 Dated: July 11, 2017

**ONE LLP**

13  
14 By: /s/ Joanna Ardalan  
15 Joanna Ardalan  
16 John Tehranian  
17 Attorneys for Plaintiff,  
18 Tony Hong  
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**DEMAND FOR JURY TRIAL**

Plaintiff Hong hereby demands trial by jury of all issues so triable under the law.

Dated: July 11, 2017

**ONE LLP**

By: /s/ Joanna Ardalan  
Joanna Ardalan  
John Tehranian  
Attorneys for Plaintiff,  
Tong Hong